88-582

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1988
No.

MARGO FICAROTTA,

Petitioner,

vs.

JOHN P. RENNA, Individually and/or Commissioner of N.J. Department of Community Affairs, WILLIAM M. CONNOLLY; Individually and/or Director of the Division of Housing; RALPH PFLEGER; Individually, and/or as Chief and Administrator of the Bureau of Housing Inspection, JOHN J. CHERNOSKI; Individually and/or as the Deputy Attorney General, Department of Law and Safety, MARK I. SIMAN; Individually and/or N.J. Deputy Attorney General, Department of Law and Safety

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Whether petitioner (a landlord) can be incarcerated punitively for contempt of a court order because of respondents who maliciously mislead judges about the law, (as all contempts are criminal in N.J. for over 20 years) for one housing violation, (which was not a housing violation) while a formal appeal was pending in the N.J. Appellate Division, (with a Supersedeas Bond having been posted months before the incarceration for more than the penalty with the N.J. Superior Court), without a contempt hearing, without bail and in violation of the Due Process Clause and other provisions of the federal and state constitutions?
2. Is there a bias by the courts against a pro se landlord, by the denial of petitioner's demand for a jury trial against respondents, who are three state officials and two deputy attorneys general, who

committed many wrongful and illegal acts, as they acted "under color of state law and authority" and are subject to liability under the Civil Right Act, Title 42 U.S.C. 1983, etc. or are they above the law?

3. Whether the U.S. District Court and the Third Circuit can dismiss petitioners right to a jury trial because petitioner's former attorney did not state claims, and can petitioner be held responsible for his incompetency inasmuch as a new attorney will be retained for the jury trial?

4. Whether the United States Court of Appeals for the Third Circuit and the U.S. District Court have the legal right to deny petitioner a jury trial for damages in excess of $10,000, without any oral argument of any kind, invoke Certiorari, based on the supervisory power of this Honorable Court under U.S.C. 455(a) and Fifth Amendment Due Process Clause and other violations of petitioner's constitutional rights,

especially since civil or criminal contempt for the purpose of applying the due process clause of the Fourteenth Amendment is itself a question of federal law?

5. Whether a mom and pop landlord, who has been in business of low income housing for over forty years (having never been fined by any city inspector), have constitutional rights, when these five state employees maliciously punished petitioner for being able to read "over four stories" by sending a law abiding landlord to prison, without any redress?

6. Whether the U.S. District Court and the Third Circuit Court of Appeals were biased, by denying petitioner a jury trial, as the former presiding judge of the State Appellate Court, who sent petitioner to prison, is now Third Circuit Court of Appeals Judge Morton I. Greenberg and he was a former N.J. Deputy Attorney General?

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OPINION BELOW

The Court of Appeals entered its "Judgment Order" denying petitioner a jury trial on 2 February 1988. A copy is attached as Appendix A-1.

The Court denied petitioner's petition for rehearing and suggestion for rehearing in banc on 25 March 1988. A copy of the "Sur Petition for Rehearing" is attached as Appendix B-1.

The erroneous decision of the U.S. District Court consisting of six (6) pages is attached as Appendix C-1.

JURISDICTION

On 2 February 1988 the Court of Appeals entered judgment affirming the denial of petitioner's demand for a jury trial (Appendix A-1). A timely Suggestion for Rehearing In Banc was filed. The Court of Appeals entered its Order denying the Suggestion for Rehearing In Banc on March 25, 1988. This petition is timely filed and the jurisdiction of this Court is invoked under Title 28, United

States Code, Section 1254(1) as extensions of time were granted.

CONSTITUTIONAL PROVISIONS INVOLVED

A. United States Constitution Amendment 5: nor shall....he deprived of life, liberty or property, without due process of law....

B. United States Constitution Amendment 6: In all criminal prosecutions, the accused shall enjoy the right...by an impartial jury...and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; and to have compulsory process for obtaining witnesses in his favor; and to have assistance of counsel for my defense.

C. United States Constitution Amendment 8: Excessive bail shall not be required, nor excessive fines imposed nor cruel and unusual punishment inflicted.

D. United States Constitution Amendment 14: ...nor shall any state deprive any person of life, liberty, or property without due process of law...nor deny to any person within its jurisdiction the equal protection of the laws.

E. United States Constitution Amendment 7: ...the right of trial by jury shall be preserved, and no fact tried by a

> jury, shall be otherwise re-examined in any court of the U.S., than according to the rules of common law.

Petitioner is entitled to the fundamental rights to a fair trial and due process of law and to the effective assistance of counsel before being incarcerated. None of the above rights were given to petitioner.

STATEMENT OF THE CASE

The Third Circuit Court of Appeals affirmed the denial of a jury demand requested by petitioner for the punitive, false incarceration for one housing violation. This was done by the five respondents, who misled judges about the N.J. Multiple Dwelling Laws and N.J. Rule of Court 1:10-5 maliciously, regarding contempt, for not complying with a court order that was erroneous, regarding the abatement on the one violation, which was being appealed in the State Appellate Court (N-1).

The United States Constitution places substantial limitations upon state action,

and the cause of action as provided in 42 U.S.C. 1983 which says:

> "every person who acts under color of state law to deprive another person of a constitutional right shall be answerable to that person in a suit for damages."

The contempt laws in New Jersey have stated, for over 20 years that all contempts are criminal and penal in nature, as shown by In re Fair Lawn Education Association 63 N.J. 112 (1973), Zoning Adjustment v. Datchko 142 N.J. Super 501; Essex County Welfare Board v. Perkins, 133 N.J. Super 189 (App. Div. 1975); In re Yengo 84 N.J. 111, 190-120 (1980) the N.J. Supreme Court said:

> "In general, contempt includes disobedience of a court order.... The essence of the offense is defiance of public authority.... A [contempt] defendant is entitled to certain safeguards accorded criminal defendants. These safeguards include the presumption of innocence, the privilege against self-incrimination, the right of cross-examination, proof of guilt beyond a reasonable doubt, and the admissibility

of evidence in accordance with the Rules of Evidence."

None of these safeguards as enunciated above, which are given to criminals were given to petitioner. Petitioner also had no contempt hearing as should have been done under N.J. R.1:10-2. Under R.1:10-3 petitioner should have been allowed bail, which also was not allowed. R.1:10-4 which says the same judge whose order was allegedly contemned, cannot hear the case except with the consent of the person charged and this also was not done. The law clearly says, and the five defendants knew this, that contempt cannot be summarily adjudicated ex parte, under R.1:10-5 on return of a motion without adopting the procedures of R.1:10-1 et seq. which were deliberately not followed (L-1).

Petitioner had posted a Supersedeas Bond with the Superior Court for more than the penalty on August 12, 1985 and had a formal appeal pending before the N.J. Appellate

Division (Case No. A-5424-84T6) when the respondents made sure by tricky, deceptive, and perhaps unethical means, to get petitioner imprisoned without bail, long before the appeal was decided. The respondents flagrantly violated the due process clause in a criminal contempt case for punitive reasons. If it wasn't for punitive reasons, respondents would have waited, as the one violation did not affect the health, safety or welfare of the three tenants (as they had battery operated detectors and three means of egress in case of a fire), until the Appellate Court decided the case. After the Appellate Court decided the case and would have shown petitioner the law that required the electrical interconnected alarm system, petitioner certainly would have had them installed. The Multiple Dwelling Laws have no such law for incarceration as shown by the laws in petitioner's appendix (D-1) which is the only appellate case to address expensive electrical alarms.

Respondents did not wait and had petitioner fully processed and incarcerated on October 22, 1985. The Appellate Court did not decide the case until April 8, 1987, and petitioner could have been kept in prison for this period of time, approximately 18 months (N-1).

U.S. District Court Judge Ann E. Thompson cites three cases in her erroneous decision (Appendix C-1) regarding petitioner's case as being civil contempt. Not so, as it was criminal contempt as shown by this Court in the re Feiock case (No. 86-787).

In the landmark case of New Jersey Dept. of Health v. Roselle, 34 N.J. 331, (1961) it says at 337-338:

> "The word 'contempt' signifies a public offense.... The contempt i.e., the public wrong consists of a defiance of governmental authority.... The act or omission must be accompanied by a mens rea, a willfulness, an indifference to the court's command.... If a man is alleged merely to be in 'contempt' he may not know whether he is hailed to answer a criminal

> charge or to respond to a prayer for supplemental relief for the adversary party. Yet the object of the proceeding is of great moment, for if it is criminal, he is entitled to the safeguards accorded one charged with crime...."

The second case Pierce v. Pierce, 122 N.J. Super 359, 360 (App. Div. 1973), the court reversed the order entered which imposed a jail sentence upon defendant for failure to comply with a court order for support in a matrimonial cause.

In regard to the third case, Shillitani v. U.S., 384 U.S. 364 (1966) this Court has written about Shillitani and many, many other Federal cases in No. 86-787 which is the Feiock case decided April 27, 1988. Justice Byron White who delivered the opinion remanded the case back to the California courts as this Court was uncertain whether Feiock was cited for civil or criminal contempt. There is no question that petitioner's case was criminal contempt.

The chronological order of the punitive incarceration is as follows:

1. Case was heard in Superior Court and decided May 29, 1985, by written decision of Superior Court Judge Daniel A. O'Donnell.
2. A Notice of Appeal was filed timely on July 15, 1985 to the N.J. Appellate Court.
3. A Supersedeas Bond for more than the penalty was sent to the N.J. Superior Court on August 12, 1985.
4. An Emergent Hearing was held before P.J.A.D. Morton I. Greenberg on October 22, 1985 (M-1).
5. Petitioner was fully processed and incarcerated without bail on October 22, 1985, by Judge Greenberg (B-1).
6. Appellate Court decided the case on April 8, 1987 (3-9 to 3-26 in Brief to Third Circuit) 18 months later (N-1).

Petitioner was not allowed an Emergent Hearing because of DAG Siman, before Justice Handler of the N.J. Supreme Court according

to R.2:9-8, as then P.J.A.D. Morton I. Greenberg, now a Third Circuit Judge, sent petitioner to prison immediately (M-1).

In regards to the 17 page decision written by the Appellate Court (3-9 to 3-26 in Brief to Third Circuit) this Honorable Court can see by reading the opinion that the expensive electrical interconnected alarm and petitioner's punitive incarceration were skirted and not addressed, even though these questions were specific points under argument (N-1).

The Appellate Court's wording in the decision regarding the punitive incarceration is as follows:

> " Defendant was jailed for a brief time and was eventually released upon her promise to comply with the abatement order. Accordingly, we could deem her argument on this point moot since she is no longer incarcerated. There is apparently no remedy which this court could fashion <u>even if we were ultimately to disagree with Judge O'Donnell's order</u>. However, we conclude that the judge's decision was a

proper exercise of his discretion. Given the finality of his judgment and this court's refusal to stay the provision directing the abatement, Judge O'Donnell did have jurisdiction to entertain the State's action to enforce its judgment, regardless of the pendency of this appeal. See N.J.S.A. 55:13A-19(b)[1]; Pressler, Current N.J. Court Rules (1986), Comment R.1:10-5.

" Pursuant to R.1:10-5, civil contempt is a remedy available to an aggrieved litigant whose opponent has refused to comply with a court order. In the ordinary case, where a court order which is the subject of enforcement proceedings involves only the performance of a single act, as was the case here, confinement until there is performance is an acceptable solution. Essex County Welfare Board v. Perkins, 133 N.J. Super. 189, 196 (App. Div.), certif. den. 68 N.J. 161 (1975). The legal justification for such commitment is to secure compliance with a court order...the State properly sought her imprisonment etc."

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[1] N.J.S.A. 55:13A-19(b) pertains to penalty only, not incarceration. No multiple dwelling law permits incarceration!!!

This Honorable Court has stated in the Feiock case:

> "It is criminal contempt if the sentence is punitive, to vindicate the court's authority and when the fine is paid to the Court and also the proposition that guilt must be proved beyond a reasonable doubt."

Is there anything more punitive than imprisonment for one housing violation? Also, all the criteria shows this case was conducted as a criminal contempt case by N.J. Deputy Attorney General Siman and this Court has said in the Feiock case:

> "These distinctions lead up to the fundamental proposition that criminal penalties may not be imposed on someone who has not been afforded the protection that the Constitution requires of such criminal proceedings, including the requirement that the offense be proved beyond a reasonable doubt."

Also this Court has stated that one who is charged with a crime is "entitled to be informed of the nature of the charge against him but to know that it is a charge and not

a suit." Gompers v. Bucks Stove & Range Co., 221 U.S. 418, 446 (1911). It is also true, of course, that if both civil and criminal relief are imposed in the same proceeding, then the criminal feature of the order is dominant and fixes its character for purposes of review. Nye v. United States, 313 U.S. 33, 42-43 (1941) quoting Union Tool Co. v. Wilson, 259 U.S. 107, 110 (1922).

Laws and regulations should be interpreted in a reasonable and common sense manner, bearing in mind that overly strict enforcement causes rampant abandonment of properties, especially low income housing as is in the case at bar, and hurts the poor tenants the most. Also these respondents over-kill for penalties, are one of the main causes of the gigantic problem of so many homeless people in New Jersey looking for low income housing.

What has happened to petitioner in N.J. has made all landlords afraid to exercise their legal rights, even when they are correct about the Multiple Dwelling Laws for fear of

being incarcerated, thus making New Jersey a police state contrary to all laws, etc. Since this whole incarceration was illegal, as the judges were misled by these state officials, who summarily had petitioner imprisoned at their will, because of their title. This case is truth-stifling, despotic and exceedingly dangerous to liberty especially if the abuses of state power, which is in violation of the Due Process Clause, is not heard by a jury for damages as the order of incarceration was not a valid or lawful order.

It is most respectfully requested that this Honorable Court read petitioner's Brief, Reply Brief, and Petition In Banc written to the Third Circuit Court of Appeals as they are more detailed.

STATEMENT OF FACTS

Petitioner has sued the named respondents for violation of my rights under the Fifth, Sixth, Seventh, Eighth, and Fourteenth Amendments to the U.S. Constitution.

Petitioner states that my rights were violated by the named respondents, by their individual and joint acts in prosecuting petitioner before the Courts of the State of New Jersey and seeking my incarceration for one (1) single housing violation, which was not a violation.

This Honorable Court can see, by the laws submitted in the appendixes, that petitioner can read three (3) words "over four stories" and petitioner's building had three (3) stories with three (3) apartments (the least amount coming under the purview of the State). Petitioner states that I was wrongfully and falsely incarcerated, without bail, while a supersedeas bond was posted for more than the penalty, while an appeal was properly pending before the Appellate Division of the Superior Court (A-5424-84T6) and without a contempt hearing as required under R.1:10-2 (L-1). What good is making an appeal, if this can be done?

Before R.1:10-5, which was the Rule of Court used by respondents can be applied, R.1:10-1, 2, 3, and 4 must be complied with, and Deputy Attorney General Siman knew this as he is quoted in Trenton Times Newspaper dated October 22, 1985 as saying:

> "I believe there is no bail. This charge used to be called civil contempt."

Therefore, when DAG Siman and the State respondents sought relief by an improper application of R.1:10-5 only, without using R.1:10 et seq., petitioner's right of the Due Process Clause was grossly and flagrantly violated for punitive reasons and definitely was criminal contempt. The Appellate Division of the Superior Court in Canino v. D.R.C. Company (A-1662-85T5) (212 N.J. Super 620) has said:

> "Neither the trial court nor this court is at liberty to ignore the adjudicated nature of contempt in this State as a criminal procedure, and the requirement that, depending on the circumstances, it be handled under R.1:10-1 or R.1:10-2."

Petitioner states that the respondents were aware of the law and Rules of Court regarding my incarceration and are guilty of the punitive false imprisonment of petitioner and malicious prosecution. Also petitioner charges them with willful and wanton misconduct, as it was performed knowingly, intentionally and maliciously.

There is proof by way of respondents getting an ex parte court order incarcerating petitioner without a contempt hearing and for other reasons that the federal Civil Rights Act was violated under 42 U.S.C. 1985(3) besides 1983. In addition, since it was a conspiracy, the liability under statute provides that every person having knowledge that certain wrongs to be done, or about to be committed and having power to prevent their commission, neglects or refuses to do so, shall be liable to petitioner who was injured under 42 U.S.C.A. 1986 and 42 U.S.C. 1983. The amount of damages are in

excess of $10,000 for humiliation, mental upset, injury to petitioner's reputation, daily anguish of shock, shame and the upset of being fully processed and held in prison for more than 24 hours without bail etc., especially since this case made the front pages of many newspapers and television for weeks.

REASONS FOR GRANTING THE WRIT

Where petitioner did not receive her full rights to direct federal appellate review, the Due Process Clause demands that my denial of a jury trial be vacated as justice, fairness and truth demand this. Under Title 42 U.S.C.]1983, which says:

> " Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution...shall be liable to the party injured in an action at law, suit in

equity, or other proper proceeding for redress.

"As the language itself makes clear, the central purpose of 1983 is to 'give a remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position.' Monroe v. Pape, 365 U.S. 167, 172 (1961) (emphasis added). The United States Constitution among other things, places substantial limitations upon state action, and the cause of action provided in 42 U.S.C. 1983 is fundamentally one for '[m]issuse of power, processed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.' United States v. Classic, 313 U.S. 299, 326 (1941)"

Inasmuch as criminal penalties were imposed, it was up to the state to show "beyond a reasonable doubt" that they were correct about the Multiple Dwelling Law, which was not done. Also, nevertheless, petitioner, who is over 60 years of age, whose only crime was one over-time parking ticket in my entire life, was fully processed and imprisoned illegally.

The Third Circuit Court of Appeals ruled on petitioner's case on March 25, 1988, a month before the Feiock case was decided on April 27, 1988. This case clearly shows the difference between civil and criminal contempt as decided by this Court, and shows that the U.S. District Court's decision rendered in petitioner's case was erroneous. New Jersey and California among other states have a long string of decisions, existing with clarity and forcefulness, that these states consider all contempts, whether labelled criminal or civil, are in fact to be treated criminal and penal in nature and respondents knew this.

In Lusardi v. Curtis Point Prop. Owners Assn., 138 N.J. Super, 4, 50 (App. Div. 1975) states where the same conduct can support both a charge of contempt pursuant to R.1:10-2 and an application for aid to a litigant under R.1:10-5, the two actions must be tried separately, which wasn't done (G-2). This case says:

> "The procedure and rights of the person concerned depend very much upon the purposes of the proceeding, and hence our rule of court prescribes the processes carefully to the end that he may know at once whether he is to meet a penal charge or the civil claim of a litigant, and may be afforded the rights appropriate to the proceeding. R.1:10-1 to 5. [In Re Zicarelli, 55 N.J. 249, 271 (1970), aff'd sub nom. Zicarelli v. Investigation Comm'n, 406 U.S. 472, 92 S. Ct. 1670, 32 L. Ed. 2d 234 (1972)"

In Essex County Welfare Board v. Perkins 133 N.J. Super 189 (App. Div. 1975) it says:

> "...a contempt proceeding is essentially punitive in nature, may only be instituted by the Court and requires that defendant receive assistance of counsel and other safeguards appropriate to criminal proceedings, R.1:10-2 to R.1:10-5."

As continued in Zoning Board v. Datchko, 142 N.J. Super 501, 510 (App. Div. 1976), page 509, it says:

> "In the matter of....Victoria Datchko charged with contempt of court, did not specify the acts or omissions alleged to have been contumacious as

> required under R.1:10-2. Instead the alledged acts of contempt were stated in the affidavits, served on defendants,....However, we consider the procedure resulting in the contempt order...so defective as to require a reversal of that order."

Please notice that DAG Siman did not follow the proper law for contempt to have me incarcerated as all the cases cited in petitioner's Briefs to the Third Circuit Court of Appeal show there is only criminal contempt in New Jersey.

The respondents used N.J. Rule of Court 1:10-5 to have petitioner incarcerated for the one (1) housing violation because there is no N.J. Multiple Dwelling Law that permits incarceration. The N.J. Appellate Court ruled in Canino v. D.R.C. Co., 212 N.J. Super 620, 515A 2d 1267, also a contempt case and said:

> "The principle issue raised on appeal is whether such an order may be issued under the Court's inherent powers without complying with the procedures set forth in

R.1:10-1, et seq. We conclude that it may not."

In petitioner's case as shown , R.1:10-1, R.1:10-2, R.1-10-3, and R.1:10-4 were not used and contempt was summarily adjudicated on return of "Order Enforcing Litigant's Rights" under R.1:10-5 only (F-1, G-1, H-1). There never was an order to show cause why petitioner should be held in contempt of court as R.1:10-2 states, or bail as stated in R.1:10-3 or a trial as stated in R.1:10-4 before using R.1:10-5. These respondents therefore are guilty of violating state laws and constitutional rights of Due Process Clause for this punitive and malicious prosecution which ended with imprisonment of a law abiding landlord, over 60 years old.

One of the cases cited by the U.S. District Court is Pierce v. Pierce 122 N.J. Super (App. Div. 1973) where the court reversed an order entered pursuant to N.J. Rule of Court 1:10-5, which imposed a jail sentence upon

defendant for failure to comply with a support order in a matrimonial cause and is not similar to petitioner's case, as petitioner was imprisoned and will be a jail bird for the rest of my life. Deputy Attorney General Siman used erroneous court orders, knowingly, to vindicate the court's authority, knowing of the formal appeal that was made and the supersedeas bond that had been posted with the Superior Court for more than the penalty imposed.

Aside from all the laws that these Deputy Attorneys General flagrantly violated, it is not even "common decency" or "conscienable" to have incarcerated petitioner for one housing violation, with the least amount of apartments coming under the purview of the State. The one housing violation did not affect the health, safety or welfare of the three tenants, who had battery operated smoke detectors in the three apartments and three means of egress in case of a fire. They, the three tenants, also did not want

the overly sensitive electrical connected fire alarms and petitioner was willing to put battery operated smoke detectors in the common area also, but these five respondents would not allow it, even though the law does. The legal action that should have been taken, if petitioner's building was truly unsafe and uninhabitable was:

1. penalties (N.J.S.A. 55:13-19)
2. closing of the building (N.J.A.C. 5:10-1.33)
3. use of the Receivership Laws (N.J.S.A. 2A:42-85 et seq.),

not the unconstitutional imprisonment. These respondents could have wholly prohibited an offending business operation and petitioner would have been out of business. Petitioner could have appealed the three legal remedies available to the state, but how can petitioner appeal the false incarceration and all that it entails?

All the unlawful acts of the respondents should be brought before a jury as the

violations by these respondents are too numerous to mention in this petition and let them decide.

As is stated in many cases:

> "it is important to keep the doors of the Federal Courts open to legitimate claims,"

as in this civil rights violation case. There is no doubt that the state courts erred and so did the U.S. District Court and the Third Circuit Court of Appeals, as the ex parte order of incarceration was not, valid or lawful, and white washes and cover-ups should not be allowed, as it brings the Administration of Justice into disrepute with law abiding people.

The obliteration of petitioner's demand for a jury trial, for the punitive incarceration, for one (1) so called housing violation, constitutes a denial of due process which manifestly shows the conflict between the Third Circuit and this Honorable Court as stated in the Feiock case.

It should be noted here that because petitioner was the first landlord sent to prison by these state employees, that now many landlords are being sent there by the cities and counties, which follows what the state does and the denial of due process is running rampant in New Jersey. Only by way of a jury trial can the entire truth be told about these respondents who abuse their power and think they are above the law because they think they are immune absolutely from damage suits which they are not. Monroe v. Pape, 365 U.S. 167, 172 (1961), United States v. Classic, 313 U.S. 299, 326 (1941), Scheuer v. Rhodes, 416 U.S. 232, 243 (1974) etc.

Appellant respectfully prays that this Honorable Court will not allow another law-abiding landlord to be imprisoned, as petitioner was. Many landlords, because of what has happened to petitioner have abandoned their properties, especially low income housing, as these respondents are enforcing

maximum standards for penalties, not reasonable minimum standards as mandated by the Multiple Dwelling Laws.

It is a sad commentary on the administration of justice when hardened criminals, such as Charles Manson, receive more legal rights than petitioner, and this case is undeniably riddled with errors etc., which is fraught with prejudice to the petitioner, a landlord. Not all landlords are recalcitrant and bad and this bias by the courts must be stopped. From what has happened in the almost seven years petitioner has been fighting these respondents, it seems this landlord has no legal rights.

The U.S. District Court denied the jury demand, which is clearly an erroneous decision, as the case Feiock v. Feiock, No. 86-787 clearly shows. Petitioner made timely petitions to the Third Circuit Court of Appeals pursuant to R.35(d) and 40 of the Federal Rules of Appellate Procedure and the petition was denied, in a one sentence

Judgment Order, with the court in banc not participating in the case. A law abiding landlord, who was a mom and pop landlord for over 40 years, should not have been imprisoned for being correct about the Multiple Dwelling Law and for trying to protect her legal rights in the proper forum. <u>If due punishment for one housing violation was incarceration, what would due punishment for two violations be--electrocution</u>? Many, many landlords have contacted petitioner complaining about the over-kill by the respondents. Only if this Honorable Court issues a Writ of Mandamus for a jury trial will truth and justice be served. Amendment 7 says "the right of trial by jury shall be preserved."

> "The framers of the Constitution considered the right to jury trial to be of great significance. Experience has shown that juries bring a quality of mercy and good common sense to the administration of the laws when lawyers and judges forget where justice lies. Juries have sometimes inflicted injustice. But for hundreds of years they have

been an important safeguard between man and his government."

In conclusion, these state officials would have continued to commit these wrongful acts "under color of state law or authority" and because of this petitioner had no choice but to practically give her properties away or be constantly imprisoned, as they are the proximate cause of petitioners injury because the courts believed them as Deputy Attorneys General of the State of New Jersey.

The "Power of the Commissioner" under N.J.S.A. 55:13A-6 does not permit the incarceration of a landlord.

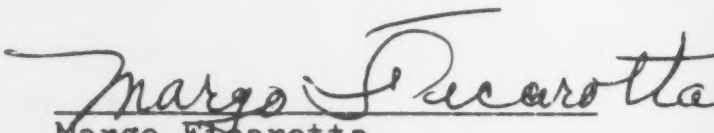
CONCLUSION

The decision of the Third Circuit Court of Appeals below failed to redress the constitutional wrongs that have been done against this petitioner. This petitioner has no further recourse but this Court. Substantial constitutional questoins are involved that can only be addressed by this Court, and without this Court's decision on these issues, the questions will go unresolved and law abiding landlords will be incarcerated without the Due Process Clause being applied.

For the above stated reasons, this petitioner, respectfully requests this Court to accept this case for full review on the merits of the issues presented and that a jury trial be mandated to provide this

citizen her rights of redress by access to federal justice.

Respectfully submitted



Margo Ficarotta
1215 Yardley Road
Morrisville, PA 19067
Telephone: (215) 295-4889

Dated: September 30, 1988

(Filed April 4, 1988, William T. Walsh, Clerk)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-5522

MARGO FICAROTTA,
Appellant

v.

JOHN P. RENNA, COMMISSIONER OF DEPT. OF COMMUNITY AFFAIRS; WILLIAM M. CONNOLLY; RALPH PFLEGER; JOHN J. CHERNOSKI; MARK I. SIMON

Appeal from the United States District Court for the District of New Jersey-Trenton, (D.C. Civil Action No. 86-4909), District Judge: Hon. Anne E. Thompson

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Submitted Under Third Circuit Rule 12(6)
January 19, 1988

Before: HIGGINBOTHAM, SLOVITER and MARIS, Circuit Judges

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby AFFIRMED.

Costs taxed against appellant.

BY THE COURT,

/s/ A. Leon Higginbotham
Circuit Judge

Attest:

/s/Sally Mrvos, Clerk
Certified as a true copy and issued in lieu of a formal mandate on April 4, 1988.

Test: /s/M. Elizabeth Ferguson, Chief Deputy Clerk, U.S. Court of Appeals for the Third Circuit

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 87-5522

MARGO FICAROTTA,
Appellant

v.

JOHN P. RENNA, COMMISSIONER OF DEPT. OF COMMUNITY AFFAIRS; WILLIAM M. CONNOLLY; RALPH PFLEGER; JOHN J. CHERNOSKI; MARK I. SIMON

(D.C. Civil No. 86-4909)

SUR PETITION FOR REHEARING

Present: GIBBONS, Chief Justice, SEITZ, WEIS, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, SCIRICA and COWEN, Circuit Judges.

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit

in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court in banc, is denied.

BY THE COURT,

/s/ A. Leon Higginbotham
Circuit Judge

Dated: March 25, 1988

(Original filed July 27, 1987, William T. Walsh, Clerk)

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 86-4909, (AET)

MARGO FICAROTTA,
Plaintiff

V.

JOHN. P. RENNA, etc., et al.
Defendants

MEMORANDUM AND ORDER

THOMPSON, District Judge

(Entered on the docket on July 29, 1987, William T. Walsh, Clerk

By /s/ ERC, (Deputy Clerk)

This matter comes before the court on motions by plaintiff Margo Ficarotta for reconsideration of an order of this court dated March 18, 1987, for an extension of time to file an appeal, and for an investi-

gation by the court of Defendant Mark I. Siman, Deputy Attorney General.

Ms. Ficarotta's complaint charges the defendants John P. Renna, William M. Connolly, Ralph Pfleger, John Cernowski and Mark I. Siman, all employees of the State of New Jersey, with violating her constitutional rights by arresting and imprisoning her. Plaintiff alleges that her arrest and imprisonment were illegal and violated her rights under the Eighth and Fourteenth Amendments.

The defendants filed a motion to dismiss for failure to state a claim and on March 18, 1987, this court dismissed plaintiff's complaint for failure to state a claim for which relief could be granted. The court found plaintiff's claim that she was illegally arrested and imprisoned to be without merit. This court does not have before it any claims involving the application of state

regulations involving the installation of automatic smoke detectors. The only issue raised by Ms. Ficarotta's complaint was her claim that she was illegally arrested and held without bail in violation of the United States Constitution.

On June 21, 1985, the Superior Court of New Jersey ordered Ficarotta to pay $1,440.00 in penalties for fire hazard violations in an apartment house owned by her. She was also ordered to abate any and all code violations within 60 days. (Defendants' Exhibit II, March 16 motion papers). On September 18, 1985, Ficarotta was once again ordered to install automatic smoke detectors in the apartment house. The September 18, 1985 court order states that failure to comply within 30 days will result in an arrest warrant being issued on the ex parte application of the State of New Jersey Department of Community Affairs. The arrest

warrant would commit Ficarotta to Mercer County Jail until such time as the smoke detectors were installed. (Defendants' Exhibit III). Ficarotta appealed the order to the Appellate Division and was granted a stay of the monetary penalty on the condition that she file a $2,000.00 supersedeas bond with the court. The court, however, expressly denied her request for a stay on the order to correct the violations. (Defendants' Exhibit IV). A warrant for Ficarotta's arrest was issued with an Order of Commitment by the Superior Court on October 21, 1985. (Defendants' Exhibit V and VI). On October 22, 1985 the Appellate Division denied Ficarotta's request for a stay of the arrest warrant. (Defendants' Exhibit VII). Ficarotta was arrested on October 22, 1985 and held overnight. She was released on October 23, 1985 on the condition that she

comply with the court's previous order and install automatic smoke detectors by November 22, 1985. (Defendants' Exhibit IX).

Ficarotta maintains that the defendants violated her rights by arresting her when an appeal was pending and a bond had been posted. The bond ordered by the Appellate Division applied only to stay the judgment of $1,500.00. Both Ficarotta's motion to stay the order to abate the violations and her motion to stay the arrest warrant were denied by the Appellate Division. The stay of the penalty and the bond she had posted did not give Ficarotta the right to refuse to install the smoke detectors nor did they protect her from a valid arrest warrant.

Ficarotta further argues that once she was arrested her rights were violated by being held overnight without bail. Ficarotta appears to have confused the concepts of

"civil" and "criminal" contempt. While imprisonment for criminal contempt requires the same safeguards extended to one charged with a crime, imprisonment for "civil" contempt does not require those same safeguards. Shillitani v. U.S., 384 U.S. 364, 365 (1966). When an individual is jailed for failure to obey a court order and will be released when she complies with the order, the proceeding is one for civil rather than criminal contempt. Id., at 368-70. Ficarotta was not held in criminal contempt as it is defined in New Jersey Dept. of Health v. Roselle, 34 N.J. 331 (1961). In Roselle the court indicated the difference between what is generally referred to as criminal contempt and what is generally referred to as civil contempt. Criminal contempt is a proceeding initiated by the court in which the court issues a judgment

which is a finite sentence. A civil proceeding is a proceeding which provides for the enforcement of the adversary's rights. See Pierce v. Pierce, 122 N.J. Super. 359, 360 (App. Div. 1973). In a civil contempt proceeding the "incarceration ends when the need for correction ceases, i.e., upon defendant's compliance with the order." Roselle, at 339. In this particular case the order obtained by the Commissioner of Community Affairs, State of New Jersey, required Ficarotta to install a certain type of smoke detector. When she agreed to do so she was released from jail.

Ficarotta was not subjected to a criminal contempt proceeding and, therefore, was not entitled to the safeguards which attend such proceedings. Ficarotta's arrest and imprisonment was pursuant to a civil contempt order. As discussed above her arrest was valid and

no violation of her constitutional rights has been presented by this case. The court will deny Ficarotta's motion for reconsideration. The court will, in consideration of her pro se status, allow Ficarotta 30 days from the date of this order to file her appeal.

Ficarotta has also moved that this court order an investigation of Deputy Attorney General Mark Siman for unethical conduct pursuant to Rule 7 of the U.S. District Court Rules, District of New Jersey. This court does not find anything in Ficarotta's papers to warrant an investigation of Deputy Attorney General Siman's behavior. Ficarotta appears to blame Siman for her arrest and imprisonment. As this court has noted above, Ficarotta's arrest and imprisonment for failure to comply with the court's order was valid. Siman did not behave unethically

in moving that the court find Ficarotta in contempt of its order. Ficarotta alleges that Siman was unethical in providing, then State Superior Court Appellate Judge, the Honorable Morton I. Greenberg, with certain documents prior to the hearing on Ficarotta's emergent application to stay her arrest warrant. Ficarotta, however, produces no evidence that Siman provided the court with anything other than documents which were already part of the record in her case and which she had in her possession. Finally, the court notes that the accusations made by Ficarotta involve Siman's behavior in a state court proceeding. None of the accusations involve behavior in conjunction with a case pending in the federal courts. If Ficarotta has any valid complaints regarding Deputy Attorney General Siman's behavior, those complaints should be raised in the state

court system. The court will deny Ficarotta's motion that the court order an investigation of Deputy Attorney General Siman for unethical conduct.

It is therefore on this 23rd day of July 1987,

ORDERED that plaintiff's motion for reconsideration be and hereby is denied; and it is further

ORDERED that plaintiff's motion that the court order an investigation of Deputy Attorney General Mark Siman be and hereby is denied; and it is further

ORDERED that plaintiff has 30 days from the date of this order to file an appeal.

/s/ Anne E. Thompson, U.S.D.J.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-1678-82T2

STEPHANIE THOMPSON, General Administratrix of the Estate of TAMARA THOMPSON, an infant, deceased; STEPHANIE THOMPSON, Administratrix ad Prosequendum of the Estate of TAMARA THOMPSON, an infant, deceased, STEPHANIE THOMPSON, Individually and NATHANIEL THOMPSON, Individually,

Plaintiffs-Appellants,

v.

NEWARK HOUSING AUTHORITY,

Defendant-Respondent.

Submitted January 5, 1984. Decided July 17, 1984.

Before Judges Fritz, Furman and Deighan.

On appeal from Superior Court, Law Division, Essex County.

Alvin R. Leonard, attorney for appellants (Philip M. Farber, on the brief).

Greenberg, Margolis, Ziegler and Schwartz, attorneys for respondent (Stanley P. Fishman, of counsel; Michael L. Dermody, on the brief).

The opinion of the court was delivered by DEIGHAN, J.A.D.

Moreover, under the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1, et seq. every multiple dwelling is required to be equipped with smoke detectors or smoke alarms in conformance with rules and regulations promulgated by the Commissioner of the Department of Community Affairs. N.J.S.A. 55:13A-7.1.

Pursuant to N.J.A.C. 5:10-19.11(c)2[1] an alternative for fire protection for buildings over four stories (the building involved herein is nine stories) for an automatic smoke detection system required:

[1] Now N.J.A.C. 5:10-25.3, effective June 21, 1982.

(Received, Superior Court of New Jersey, April 15, 1985, John M. Mayson, Clerk)

(Filed, John M. Mayson, Clerk of Superior Court, April 15, 1985, /s/ Albert W. Driver, Deputy Clerk, Superior Court of New Jersey, Mercer County)

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff

By: Mark I. Siman
Deputy Attorney General
Hughes Justice Complex
CN 112
Trenton, NJ 08625
(609) 292-6460

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION--MERCER COUNTY
DOCKET NO. L-85-1313

CIVIL ACTION FOR PENALTY

VERIFIED COMPLAINT

JOHN P. RENNA, COMMISSIONER OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY

Plaintiff,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA,

Defendants.

Plaintiff, John P. Renna, Commissioner of the Department of Community Affairs, State of New Jersey, having offices at 363 West State Street, City of Trenton, County of Mercer, State of New Jersey, by way of complaint says:

COUNT ONE

1. Plaintiff, the Commissioner of the Department of Community Affairs is charged with the responsibility of administering and enforcing the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.

2. Defendants were the owners of a hotel or multiple dwelling located at 685 Rutherford Avenue, Trenton, New Jersey on

Exhibit A

8. As of the date of commencement of the within action, defendants have failed to satisfy said penalty.

WHEREFORE, plaintiff demands:

1. Judgment in the amount of $1,550.00 in accordance with the provisions of N.J.S.A. 55:14A-19 and under N.J.S.A. 2A:58-1 et seq., and R. 4:70.

2. An order directing defendant to abate any and all violations within 60 days following the entry of a final order in the within matter, and in the event said order shall not be complied with, defendants shall, upon proof of noncompliance, be adjudged in continuing violation of the Hotel and Multiple Dwelling Law and subject to an assessment of additional civil penalties in accordance with N.J.S.A. 55:13A-19(b).

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff

By: /s/ Mark I. Siman
Deputy Attorney General

(The original of this document has been sent to the Superior Court Clerk's Office and a copy thereof to the Mercer County Clerk's Office for filing. Dated June 21, 1985)

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff

By: Mark I. Siman
Deputy Attorney General
Hughes Justice Complex
CN 112
Trenton, NJ 08625
(609) 292-6460

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION--MERCER COUNTY
DOCKET NO. L-85-1313

JUDGMENT ON STATUTORY PENALTY

JOHN P. RENNA, COMMISSIONER OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY

Plaintiff,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA,

Defendants.

On the 17th day of May, 1985, a summary proceeding was held upon the complaint of

John P. Renna, Commissioner of the Department of Community Affairs, State of New Jersey, with Irwin I. Kimmelman, Attorney General of New Jersey, by Mark I. Siman, Deputy Attorney General, appearing for plaintiff, and Margo Ficarotta, appearing Pro Se. The Court, having heard the evidence and the argument for the respective parties, adjudged the defendants, Joseph P. Ficarotta and Margo Ficarotta, to have violated N.J.S.A. 55:13A-7 and N.J.S.A. 55:13A-19(a), (b), in that they did fail to pay civil penalties assessed pursuant to order of plaintiff; and N.J.S.A. 55:13A-19(a), (b), in that he did fail to comply with orders of plaintiff ordering him to abate violations.

WHEREFORE, it is Ordered and Adjudged on this 21st day of June, 1985, that:

1. The defendants shall pay to the plaintiff the sum of $1,550.00 which is the

total of the penalties originally assessed against the defendants for failure to comply with plaintiff's orders to abate violations under the Hotel and Multiple Dwelling Law, N.J.S.A. 55:13A-1 et seq.; and

2. The defendants shall abate any and all violations for which penalties have been heretofore assessed by plaintiff on 685 Rutherford Avenue, Trenton, New Jersey, within 60 days following the entry of this order.

/s/ Daniel A. O'Donnell, J.S.C.

(The original of this document has been sent to the Superior Court Clerk's Office and a copy thereof to the Mercer County Clerk's Office for filing, dated September 19, 1985, /s/ Daniel A. O'Donnell)

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN 112
Trenton, NJ 08625

By: Mark I. Siman
Deputy Attorney General
(609) 292-6460

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION--MERCER COUNTY
DOCKET NO. L-85-1313, J-13, 293-85

CIVIL ACTION
ORDER ENFORCING LITIGANT'S RIGHTS

JOHN P. RENNA, COMMISSIONER OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY

Plaintiff,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA,

Defendants.

This matter having been opened to the Court on Friday, September 13, 1985, by

Irwin I. Kimmelman, Attorney General of New Jersey, attorney for plaintiff, by Mark I. Siman, Deputy Attorney General and Margo Ficarotta, appearing pro se for defendants, upon plaintiff's application to this court to enforce litigant's rights pursuant to Rule 1:10-5 and the Court having considered the motion papers, reviewed the exhibits and certifications, and good cause appearing; and having found that the defendants have failed to comply with the June 21, 1985 Judgment on Statutory Penalty of this Court, therefore

IT IS on this 18th day of September, 1985;

ORDERED that the defendant, Joseph P. Ficarotta and Margo Ficarotta shall install automatic smoke detectors in the common areas which operate on alternating current and are interconnected, in compliance with the regulations of the Commissioner,

Department of Community Affairs, in the premises known as 685 Rutherford Avenue, Trenton, New Jersey, within 30 days of the date of this Order; and be it further

ORDERED that upon the submission of the Court by the plaintiff of an ex parte affidavit detailing the defendants' failure to install the aforementioned automatic smoke detectors in the common areas within 30 days of the date of this Order, and warrant for the arrest of the defendants shall issue, committing them to the Mercer County jail until they install automatic smoke detectors in the common areas which operate on alternating current and are interconnected, in compliance with the regulations of the Commissioner, Department of Community Affairs, in the premises known as 685 Rutherford Avenue, Trenton, New Jersey.

/s/ Daniel A. O'Donnell, J.S.C.

Ficarotta's objection to form of order received and found to be without merit.

/s/ Daniel A. O'Donnell

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN 112
Trenton, NJ 08625

By: Mark I. Siman
Deputy Attorney General
(609) 292-6460

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION--MERCER COUNTY
DOCKET NO. L-85-1313, J-13, 293-85

CIVIL ACTION
ORDER OF COMMITMENT

JOHN P. RENNA, COMMISSIONER OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY

Plaintiff,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA,

Defendants.

This matter having been opened to the Court on Monday, October 21, 1985, by Irwin I. Kimmelman, Attorney General of New Jersey, attorney for plaintiff, by Mark I. Siman,

Deputy Attorney General, upon plaintiff's ex parte affidavit detailing the defendants' failure to install automatic smoke detectors in the common areas, to this court pursuant to this Court's September 18, 1985 Order and the Court having considered the ex parte affidavit and good cause appearing; and having found that the defendants have failed to comply with the September 18, 1985 Order Enforcing Litigant's Rights of this Court, therefore

IT IS on this 21st day of October, 1985;

ORDERED that a warrant for the arrest of the defendants shall issue forthwith committing them to the Mercer County jail until they install automatic smoke detectors in the common area which operate on alternating current and are interconnected, in compliance with the regulations of the Commissioner, Department of Community Affairs, in the

premises known as 685 Rutherford Avenue, Trenton, New Jersey.

/s/ Daniel A. O'Donnell, J.S.C.

PAPERS CONSIDERED:

_____ Notice of Motion

__X__ Movant's Affidavits

_____ Movant's Brief

_____ Answering Affidavits

_____ Answering Brief

_____ Cross-Motion

_____ Movant's Reply

_____ Other _____

_____ Other _____

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN 112
Trenton, NJ 08625

By: Mark I. Siman
Deputy Attorney General
(609) 292-6460

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION--MERCER COUNTY
DOCKET NO. L-85-1313, J-13, 293-85

CIVIL ACTION
WARRANT FOR ARREST

JOHN P. RENNA, COMMISSIONER OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY

Plaintiff,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA,

Defendants.

The State of New Jersey to the Sheriff of the County of Mercer.

Greetings:

WHEREAS, by a certain order made in the Superior Court of New Jersey, Law Division, bearing date on the 21st day of October, 1985, in a certain cause therein depending between John P. Renna, Commissioner of the Department of Community Affairs, State of New Jersey, plaintiff, and Joseph P. Ficarotta and Margo Ficarotta, defendants, it was ordered that Joseph P. Ficarotta and Margo Ficarotta be committed to the common jail in the County of Mercer there to remain, charged with the violation of a September 18, 1985 Court Order mentioned in said order, until they install automatic smoke detectors in the common areas which operate on alternating current and are interconnected, in compliance with the regulations of the Commissioner, Department of Community Affairs, in the premises known as 685 Rutherford Avenue, Trenton, New Jersey, and that a warrant issue for that purpose.

THEREFORE, we command you, that you take Joseph P. Ficarotta and Margo Ficarotta and safely and closely keep them in your custody in the common jail of the County of Mercer until they have installed automatic smoke detectors in the common areas which operate on alternating current and are interconnected, in compliance with the regulations of the Commissioner, Department of Community Affairs, in the premises known as 685 Rutherford Avenue, Trenton, New Jersey, and satisfied the costs of this writ. And you are to make return to the Superior Court of New Jersey, Law Division, Mercer County, at Trenton, on the 23rd day of December 1985, under your hand of your doings in the premises, together with this writ.

WITNESS, HONORABLE DANIEL A. O'DONNELL, a Judge of the Superior Court, the 21st day of October, 1985.

/s/ Daniel A. O'Donnell, J.S.C.

(The original of this document has been sent to the Superior Court Clerk's Office and a copy thereof to the Mercer County Clerk's Office for filing, dated November 1, 1985, /s/ Daniel A. O'Donnell)

IRWIN I. KIMMELMAN
Attorney General of New Jersey
Attorney for Plaintiff
Richard J. Hughes Justice Complex
CN 112
Trenton, NJ 08625

By: Mark I. Siman
Deputy Attorney General
(609) 292-6460

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION--MERCER COUNTY
DOCKET NO. L-85-1313, J-13, 293-85

CIVIL ACTION
ORDER RELEASING DEFENDANT

JOHN P. RENNA, COMMISSIONER OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY

Plaintiff,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA,

Defendants.

This matter having been opened to the

Court on Wednesday, October 23, 1985, by Irwin I. Kimmelman, Attorney General of New Jersey, attorney for plaintiff, by Mark I. Siman, Deputy Attorney General, upon contemner Margo Ficarotta's application to this Court for release from the Mercer County Jail and the Court having considered the oral arguments of counsel, and good cause appearing; and having found that the contemner has changed her position with respect to their refusal to comply with the June 21, 1985 Judgment on Statutory Penalty and the September 19, 1985 Order Enforcing Litigant's Rights of this Court, therefore

IT IS on this 23rd day of October, 1985;

ORDERED that the defendant Margo Ficarotta be released from the custody of the Sheriff of Mercer County in the common jail of the County of Mercer, and be it further

ORDERED that as a condition of her release, the defendant shall obtain (1) an electrical

permit, to install automatic smoke detectors in the common areas in the premises known as 685 Rutherford Avenue, Trenton, New Jersey, from the local construction official and (2) a contract with a licensed electrician for the installation of the aforementioned smoke detectors which contract should include an estimate by the contractor of the date of completion, which shall be no later than November 22, 1985; and be it further

ORDERED that the defendants shall file with the Clerk of the Court a copy of the aforementioned electrical permit and written contract by no later than October 30, 1985 and shall serve a copy of the electrical permit and written contract upon the plaintiff by delivering said copies thereto to Deputy Attorney General Mark I. Siman, Hughes Justice Complex, CN 112, Trenton, New Jersey, by no later than October 30, 1985; and be it further

ORDERED that if the defendants fail to comply with all of the requirements of the two preceeding paragraphs, the plaintiff may request an immediate hearing before this Court, upon one day's notice to the defendants, to obtain an Order of Commitment and Warrant for Arrest committing them to the Mercer County jail until they install automatic smoke detectors in the common areas which operate on alternating current and are interconnected, in compliance with the regulations of the Commissioner, Department of Community Affairs, in the premises known as 685 Rutherford Avenue, Trenton, New Jersey; and be it further

ORDERED that the plaintiff shall inspect the aforementioned premises during the week of November 25, 1985, to determine if the said smoke detectors have been installed in compliance with the plaintiff's regulations. If the final approval from the local fire

subcode official has been obtained, stating that the smoke detector installation has been satisfactorily completed, the October 21, 1985 Warrant for Arrest shall be vacated; and it be further

ORDERED that if the aforementioned final approval has not been obtained by November 22, 1985, the plaintiff may request an immediate hearing before this Court, upon one day's notice to the defendants, to obtain an Order of Commitment and Warrant for Arrest committing the defendants to the Mercer County jail until they install automatic smoke detectors in the common areas which operate on alternating current and are interconnected, in compliance with the regulations of the Commissioner, Department of Community Affairs, in the premises known as 685 Rutherford Avenue, Trenton, New Jersey.

/s/ Daniel A. O'Donnell, J.S.C.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

A-5118-83T6

MARGO FICAROTTA,

Plaintiffs-Appellants,

v.

BUREAU OF HOUSING INSPECTION
DEPARTMENT OF COMMUNITY AFFAIRS,

Defendant-Respondent.

Submitted March 19, 1985. Remanded March 29, 1985. Resubmitted April 19, 1985. Decided May 2, 1985.

Before Judges Brody and Cohen.

On appeal from the Commissioner of the Department of Community Affairs.

Appellant, Margo Ficarotta submitted a brief pro se.

Irwin I. Kimmelman, Attorney General, attorney for respondent (James J. Ciancia, Assistant Attorney General, of counsel; John J. Chernoski, Deputy Attorney, on the brief).

PER CURIAM

In an opinion filed on March 29, 1985, we reversed an order of the Department of Community Affairs requiring the payment of certain penalties and remanded to the Department for further proceedings. We retained jurisdiction.

The Department has recently advised us that it has vacated the penalties involved. Since there will be no further proceedings in the agency, that portion of our opinion in which we retained jurisdiction is vacated.

RULE 1:10. CONTEMPT OF COURT AND ENFORCEMENT OF LITIGANT'S RIGHTS RELATED THERETO

1:10-1. Contempt in Presence of Court

Contempt in the actual presence of a judge may be adjudged summarily by the judge without notice or order to show cause. The order of contempt shall recite the facts and contain a certification by the judge that he saw or heard the conduct constituting the contempt.

Note: Source--R.R. 4:87-1, 8:8.

1:10-2. Institution of Proceedings.

Every other summary proceeding to punish for contempt shall be on notice and instituted only by the court upon an order for arrest or na order to show cause specifying the acts or omissions alleged to have been contumacious. The proceedings shall be captioned "In the Matter of-----Charged with Contempt of Court."

Note: Source--R.R. 4:87-2.

1:10-3. Bail Pending Hearings.

A person charged with contempt under R. 1:10-2 shall be admitted to bail pending the hearing. The amount and sufficiency of bail shall be reviewable by a single judge of the Appellate Division.

Note: Source--R.R. 4:87-3.

1:10-4. Contempt; Prosecution; Trial

A proceeding under R. 1:10-2 may be prosecuted on behalf of the court only by the Attorney General, the County Prosecutor of the county, or where the court for good cause designates an attorney, then by the attorney so designated. Except with the consent of the person charged, the matter may not be heard by the judge allegedly offended or whose order was allegedly contemned. Unless there is a right to a trial by jury, the court in its discretion may try the matter without a jury.

Note: Source--R.R. 4:87-4. Amended July 7, 1971 to be effective September 13, 1971.

1:10-5. Relief to Litigant

Notwithstanding that an act or omission may also constitute a contempt of court, a litigant in any action may seek relief by application in the action. A judge shall not be disqualified because he signed the order sought to be enforced. If an order entered on such an application provides for commitment, it shall specify the terms of release. An application by a litigant may be tried with a proceeding under R. 1:10-2 only with the consent of all parties and subject to the provisions of R. 1:10-4.

Note: Source--R.R. 4:87-5.

(Received and filed Appellate Division October 22, 1985, /s/ Elizabeth McLaughlin, Clerk)

ORDER ON MOTIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-5424-84T6
MOTION NO. M-607-85
BEFORE PART F

JUDGES: GREENBERG, COLEMAN, HAVEY

JOHN P. RENNA, COMMISSIONER DEPARTMENT OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA.

Moving Papers Filed: October 22, 1985
Answering Papers Filed:
Date Submitted to Court: October 22, 1985
Date Argued: October 22, 1985
Date Decided: October 22, 1985

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

MOTION FOR STAY OF WARRANT DENIED

FOR THE COURT:

/s/ Morton I. Greenberg, P.J.A.D.

Witness, the Honorable Morton I. Greenberg, presiding judge of Part F, Superior Court of New Jersey, Appellate Division, this 22nd day of October, 1985.

/s/ Elizabeth McLaughlin,
Clerk of the Appellate
Division

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ Elizabeth McLaughlin,
Clerk

(Not for publication without the approval of the Committee on Opinions)

Original filed April 8, 1987, John J. Musewicz, Esq., Acting Clerk

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-5424-84T6

JOHN P. RENNA, COMMISSIONER DEPARTMENT OF COMMUNITY AFFAIRS, STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

JOSEPH P. FICAROTTA and MARGO FICAROTTA.

Defendants-Appellants.

Argued: March 18, 1987
Decided: April 8, 1987

Before Judges King, Deighan and Havey.

On appeal from the Superior Court of New Jersey, Law Division, Mercer County.

Margo Ficarotta, appellant, argued the cause pro se for appellants.

Mark I. Siman, Deputy Attorney General, argued the cause for respondent (W. Cary Edwards, Attorney General for New Jersey, attorney; Michael R. Clancy, Deputy Attorney General, of counsel).

PER CURIAM

This appeal raises three issues. As stated by the appellant in her pro se brief, they are

POINT 1 - THE JUDGMENT OF J.S.C. DANIEL O'DONNELL FOR $1,550.00 WAS CLEARLY ARBITRARY, CAPRICIOUS AND ILLEGAL AND SHOULD BE SET ASIDE.

POINT 2 - THE INCARCERATION OF THE APPELLANT WITHOUT BAIL TO MAKE HER INSTALL THE "HARD WIRE" IN HER 3 STORY, 3 APT. BUILDING, WITH THIS APPEAL PENDING AND HAVING POSTED A SUPERSEDEAS BOND FOR MORE THAN PENALTY MONTHS BEFORE, WAS IN FACT CRUEL AND UNUSUAL PUNISHMENT.

POINT 3 - THE LAWS MUST BE ADDRESSED AND CLARIFIED REGARDING WHEN AC ELECTRICAL INTERCONNECTING ALARMS MUST BE INSTALLED. IN COMMON AREAS IN A SMALL MULTIPLE DWELLING WHERE BATTERY OPERATED SMOKE DETECTORS ARE IN APARTMENTS.

We reject all of appellants' contentions and we affirm for the reasons which we give below.

Defendant refers in her point heading to the supersedeas bond she posted, presumably to show that performance would have been completed upon exhaustion of defendant's appellate remedies. However, it is apparent from Judge Deighan's order that the supersedeas bond was required in connection with the stay of the penalty provision of Judge O'Donnell's order. Judge Deighan's order expressly refused to stay the abatement provision, and therefore the supersedeas bond was irrelevant as to that issue. Accordingly, we conclude that the trial judge acted properly when he used incarceration as a means of compelling defendant's compliance with the abatement order.

Defendant's brief third point asks us to "clarify" the law with regard to the necessity

of installing interconnected smoke detection systems in three-story buildings. As discussed above, this issue is really not before us. The proper forum for this was either an appeal from the denial of defendant's exemption request or an appeal from the imposition of the penalties. This appeal is neither. We therefore need not reach this point.

In essence, what defendant is doing is disagreeing with the Department's regulations which were adopted pursuant to the Commissioner's authority. Defendant deems plaintiff's requirements "anomalous, unreasonable, inconceivable and absurb." Basically, defendant is again asking for relitigation of an issue which has consistently been decided against her. She does not what the regulations clarified; she wants them to be invalidated. However, we do not have an

appropriate record before us on which to reach this question, even if we were so inclined.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

/s/ John J. Musewicz, Acting Clerk